

FILED

MAY 22 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

YASMANI ALEJANDRO COYT, a/k/a
YASMANI ALEJANDRO COYT-
VALDOVINO, YASMANI ALEJANDR,
PELON and PAJARO,

Defendant - Appellant.

No. 05-50705

D.C. No. CR-04-01678-RSWL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted May 15, 2006^{**}

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Yasmani Alejandro Coyt appeals from the sentence imposed after his guilty-
plea conviction for being an alien found in the United States subsequent to

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

deportation, in violation of 8 U.S.C. § 1326(a) & (b)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm and remand.

Coyt contends that 8 U.S.C. § 1326(b) is unconstitutional. He acknowledges that the Supreme Court upheld the constitutionality of 8 U.S.C. § 1326(b) in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but contends that subsequent decisions have undermined its viability such that *Almendarez-Torres* is no longer good law. This argument is foreclosed by *United States v. Weiland*, 420 F.3d 1062, 1079, n.16 (9th Cir. 2005).

Coyt also contends that his Fifth Amendment rights were violated by the imposition of a condition of supervised release that requires him to report to a U.S. probation officer within 72 hours of reentering the United States. This claim is foreclosed by *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (2006).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the reference to § 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED.